

Supreme Court, U. S.

FILED

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~~JOHN M. ROBERTS, JR.~~, CLERK

IN THE  
**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1976

No. 76-105

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FAITH HOSPITAL ASSOCIATION,  
Petitioner,

v.

BLUE CROSS HOSPITAL SERVICE, INC. OF  
ST. LOUIS, et al.,  
Respondents.

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**REPLY OF PETITIONER IN SUPPORT OF ITS  
PETITION FOR A WRIT OF CERTIORARI**

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While Respondent admits that there is a conflict in the circuits (page 9 of the Brief in Opposition); admits that there is a conflict with a recent decision of the Court of Claims (page 9, footnote 4, of the Brief in Opposition); admits that it may seek Supreme Court review in the *Whitecliff* case which raises an

identical issue in almost the *identical posture* (page 11, footnote 7, of the Brief in Opposition); does not deny that this case is typical of numerous others involving millions of dollars; yet Respondent still argues that certiorari in this case and its companion (No. 76-141) should be denied. In an argument raised for the first time in its Brief in Opposition, Respondent contends that this case is not ripe for Supreme Court review because the Court of Appeals gave Petitioner minimal and partial relief by holding that additional administrative review must be afforded petitioner in the form of direct review by the Secretary of HEW of the administrative decisions heretofore made in this case (Brief in Opposition at pages 9-10).

Respondent would have this Court allow the judgment in this case become final; have a petitioner go through the gesture of obtaining review by the Secretary; and when the Secretary either upholds or reverses the prior administrative decisions, have the losing party file a new suit in which first the District Court and then the Court of Appeals must rule once again that there is no jurisdiction on the basis of the prior ruling in this very case; and then this case can come back to this Court where review may once again be sought.

It is submitted that the rules of this Court do not and should not require this "arid [and expensive and time-consuming] ritual of meaningless form." *Staub v. City of Baxley*, 355 U.S. 317, 320 (1958). Petitioner is an aggrieved party hurt by the decision below; it should therefore be given review here since the case involves an important federal question and also a split in the circuit courts below. When there is, as here, an important and clear-cut issue of federal law, fundamental to the further conduct of the case, and where there is, as here, a basis for certiorari review because of a conflict in the circuits and a conflict with a decision by the Court of Claims, this Court will grant review

even where partial relief was given below. Specifically, this Court has granted review in a comparable situation where, as here, the Court below ordered further administrative remedies. *Greene v. United States*, 376 U.S. 149 (1964). Also, this Court has reviewed decisions below which reversed the granting of a motion to dismiss (*Land v. Dollar*, 330 U.S. 731, 734, n.2 (1947)) and which ordered a case remanded for trial (*United States v. General Motors Corp.*, 323 U.S. 373, 377 (1945)). See also *Hanover Star Milling Co. v. Metcalf*, 240 U.S. 403, 408-409 (1916); *Forsyth v. Hammond*, 166 U.S. 506 (1897); and *Gillespie v. United States Steel Corp.*, 379 U.S. 148, 153 (1964). In short, this Court will grant a worthy petition for a writ of certiorari involving issues basic to the further conduct of the case even where petitioner has not been finally precluded by the decision below.

Here, the issues involved are basic to the further conduct of the case. It is difficult to imagine a more basic issue than federal jurisdiction and whether the federal courts here have the power of judicial review of the administrative determinations in this case. Moreover, since the agency decisions heretofore made are patently wrong and in conflict with the Medicare statutes and regulations (Petition at page 18-21), this is also the appropriate time to dispose of litigation involving facts which are now over nine years old.

It is therefore respectfully submitted that the petition should be granted and this case and its companion placed on the same docket with *Mathews v. Sanders*, No. 75-1443, certiorari granted, June 1, 1976, where issues overlapping the ones in this case are involved (Brief in Opposition at page 10, note 6). If Respondent decides to seek review by this Court in *Whitecliff, Inc. v. Mathews*, 536 F.2d 347 (Ct.Cl.) or *South Windsor Convalescent Home, Inc. v. Mathews*, C.A.2, No. 75-6136

(July 27, 1976), then those cases can be held pending disposition of this case, its companion case, and *Mathews v. Sanders*, *supra*.

Respectfully submitted,

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